Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decision

19 CFR Part 4

(T.D. 91–89)

ADDITION OF BAHRAIN TO THE LIST OF NATIONS ENTITLED TO SPECIAL TONNAGE TAX EXEMPTION

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Pursuant to information provided by the Department of State, the Customs Service has found that Bahrain does not impose discriminating duties of tonnage or imposts upon vessels belonging to citizens of the United States, and that, accordingly, vessels of Bahrain are exempt from special tonnage taxes and light money in ports of the United States. This document amends the Customs Regulations by adding Bahrain to the list of nations whose vessels are exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

EFFECTIVE DATE: The reciprocal privileges for vessels registered in Bahrain became effective on June 4, 1991. This amendment is effective October 31, 1991.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Whalen, Carrier Rulings Branch (202–566–5706).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, called "light money", on all foreign vessels which enter United States ports (46 U.S.C. App. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of satisfactory proof that no discriminatory duties of tonnage or impost are imposed by that foreign nation on U.S. vessels or their cargoes (46 U.S.C. App. 141).

Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been found to be exempt from the payment of any

higher tonnage duties than are applicable to vessels of the United States and from the payment of light money. The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

FINDING

On the basis of the information received from the Department of State regarding the absence of discriminatory duties of tonnage or impost imposed on U.S. vessels in the ports of Bahrain, the Customs Service has determined that vessels of Bahrain are exempt from the payment of the special tonnage tax and light money, effective June 4, 1991, and that the Customs Regulations should be amended accordingly.

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS, THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12291

Because this amendment merely implements a statutory requirement and confers a benefit upon the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary; further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "major rule" as defined in E.O. 12291 and, accordingly, a regulatory impact analysis is not required.

DRAFTING INFORMATION

The principal author if this document was Francis W. Foote, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 4

Customs duties and inspections, Cargo vessels, Maritime carriers, Vessels.

AMENDMENT TO THE REGULATIONS

Accordingly, Part 4, Customs Regulations (19 CFR Part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * * * *

Section 4.22 also issued under 46 U.S.C. App. 121, 128, 141;

* * * * * * *

§ 4.22 [Amended]

2. Section 4.22 is amended by inserting "Bahrain" in appropriate alphabetical order.

Dated: October 25, 1991.

KATHRYN C. PETERSON,
Chief,
Regulations and Disclosure Law Branch.

[Published in the Federal Register, October 31, 1991 (56 FR 56006)]

U.S. Customs Service

Proposed Rulemakings

19 CFR Parts 141 and 142

ADVANCE NOTICE OF PROPOSED CUSTOMS REGULATIONS AMENDMENTS CONCERNING PREFILING OF ENTRY DOCUMENTATION

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document provides advance notice of a proposal to amend the Customs Regulations that would limit the privilege of prefiling entry documentation to entry filers who are either participants in the Automated Broker Interface or who file entries manually for merchandise which is transported on carriers that are participants in the Automated Manifest System. If the proposal is adopted, within six months after its adoption, selectivity results will be released prior to carriers' arrival only to entry filers whose merchandise is transported on carriers that are participants in the Automated Manifest System. The purpose of these proposals will be to provide incentive for carriers to automate.

DATE: Comments must be received on or before January 6, 1992.

ADDRESS: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Ernest Cunningham, Office of Inspection and Control, (202) 566–5354.

SUPPLEMENTARY INFORMATION:

Background

Generally, merchandise for which entry is required shall be entered by the consignee within 5 working days after the entry of the importing vessel or aircraft, report of the vehicle, or arrival at the port of destination in the case of merchandise transported in bond. After the merchandise is entered, Customs generally determines, after examining the

entry documentation, whether the merchandise merits examination and whether to release the merchandise.

Pursuant to § 142.2(b), Customs Regulations (19 CFR 142.2(b)), Customs has permitted entry documentation to be submitted before the merchandise arrives within the limits of the port where entry is to be made. In these cases, Customs has reviewed the submitted documentation and determined whether the merchandise is releasable even before the merchandise arrives. The merchandise is actually released at the time it arrives within the port limits.

With the onset of automation at Customs–the development of the Automated Broker Interface (ABI), the Automated Manifest System (AMS), and Cargo Selectivity, all components of Customs Automated Commercial System (ACS)–it is easier than ever to submit entry documentation before the merchandise arrives within the limits of the port where entry is to be made.

ABI refers to a module of ACS that allows entry filers to transmit immediate delivery, entry and entry summary data electronically to Customs through ACS and to receive transmissions from ACS. AMS refers to a module of ACS that allows carriers to transmit their manifest information electronically to Customs through ACS and receive transmissions from ACS. The Cargo Selectivity module allows Customs to evaluate and assess the risk of an immediate delivery, entry or entry summary transaction by examining the transmitted data for certain selectivity criteria to determine whether a general examination or an intensive examination of the merchandise is necessary.

Currently, ABI allows the electronic submission of entry data up to 60 days prior to the arrival of a vessel or aircraft. Customs is then able to process the advance data through the Cargo Selectivity module prior to the arrival of the carrier and determine whether the merchandise requires a physical examination. If Customs determines that physical examination of the merchandise or presentation of written documentation is not necessary, it can transmit a message to the carrier through AMS that the merchandise is provisionally released. While Customs maintains the discretion to override the provisional release, the carrier can generally expect that when the merchandise which receives the provisional release arrives at its port of arrival, the merchandise will be released.

There are advantages to prefiling entries. The carrier, by receiving a provisional release by Customs is able to make decisions on staging the cargo and the importer can arrange for examination or release and further distribution of the merchandise, all before the merchandise actually arrives.

Currently, any filer can prefile entries arriving on any carrier. This document gives advance notice of a proposal to amend the Customs Regulations that will limit prefiling privileges to ABI filers and to entries filed by non-ABI filers for merchandise that is transported on carriers that are participants in AMS. This proposal would involve

amendments principally to Parts 141 and 142, Customs Regulations. This document also gives advance notice that if the proposal is adopted, within six months of its adoption, selectivity results will be released prior to carriers' arrival only to entry filers whose merchandise is transported on carriers that are participants in AMS. This would mean, in effect, that provisional releases will only be issued by Customs for merchandise transported on AMS carriers. The purpose of these proposed actions will be to provide incentive for carriers to automate.

COMMENTS

In order to assist Customs in determining whether to proceed with these proposals, this notice invites written comments. Consideration will be given to any comments that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW, Washington, D.C.

CAROL HALLETT,
Commissioner of Customs.

Approved: October 17, 1991.
PETER K. NUNEZ,
Assistant Secretary of the Treasury.

[Published in the Federal Register, November 6, 1991 (56 FR 56608)]

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19 CFR Part 101

CUSTOMS SERVICE FIELD ORGANIZATION– PORT HUENEME, CALIFORNIA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of the Customs Service by designating Port Hueneme as a port of entry in the Customs District of Los Angeles, California, of the Pacific Region. The change is being proposed as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before December 31, 1991.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joseph O'Gorman, Office of Inspection and Control (202–566–8157).

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs is proposing to amend §§ 101.3 and 101.4, Customs Regulations (19 CFR 101.3 and 101.4) by designating Port Hueneme, California, as a port of entry for Customs purposes in the Customs District of Los Angeles, California, within the Pacific Region. Port Hueneme is presently listed in § 101.4(c), Customs Regulations, as a Customs station within the Los Angeles District.

The Board of Harbor Commissioners of the Oxnard Harbor District, which includes Port Hueneme, has requested designation as a port of entry and has stated that such designation would assist in meeting the demand for Customs services in southern California to support international trade and port development. The Board of Harbor Commissioners has stated that approval of this request for port of entry designation would be in the public interest. At the present time Customs business at Port Hueneme involves primarily vessels carrying vehicles and fruit.

In T.D. 82–37 (47 FR 10137), as revised by T.D. 86–14 (51 FR 4559) and by T.D. 87–65 (52 FR 16328), Customs has set forth certain criteria which should be considered in connection with a request for port of entry designation. Specifically, the community requesting such designation must: (1) Demonstrate that the benefits to be derived justify the Federal Government expense involved; (2) be serviced by at least two major modes of transportation (rail, air, water, or highway); and (3) have a minimum population of 300,000 within the immediate service area (approximately a 70-mile radius). In addition, T.D. 82–37 provides that the "actual or potential Customs workload (minimum number of transactions per year)" must meet one of several alternative criteria, one of which is "350 cargo vessel arrivals". Finally, T.D. 82–37 provides that facilities at the location must include wharfage and anchorage adequate for oceangoing vessels if a water port, cargo and passenger facilities, warehousing space for the secure storage of imported cargo pending final Customs inspection and release,and administrative office space, inspection areas, storage areas and other space necessary for regular Customs operations.

The Customs District of Los Angeles has reported to Customs Headquarters that the Oxnard Harbor District is serviced by rail, water, and

highway transportation modes and that the immediate service area has a population of 668,600 based on 1990 Census figures. As regards potential Customs workload levels, the Los Angeles District has advised that, based on the proximity of Port Hueneme to the Los Angeles metropolitan area and the relatively lower operating costs at Port Hueneme, and based on recent commercial commitments reached between Port Hueneme and two major ocean carriers as well as indications that other smaller carriers plan to begin or increase arrivals at Port Hueneme, there is a strong likelihood that vessel arrivals, which at 217 is fiscal year 1991 were below the 350 per year figure set forth in T.D. 82–37, will exceed that level be 1993 or early 1994. The Los Angeles District has further advised that Port Hueneme is a modern harbor with deep water berths, container cranes and modern warehousing and that further capital improvements will be made as part of the commercial commitments mentioned above.

Based on the above, Customs believes that Port Hueneme meets the current standard for port of entry designation set forth in T.D. 82–37.

The geographical limits of the proposed port of entry of Port Hueneme, which approximate the present boundaries of the Oxnard Harbor District, would be as follows:

> In Ventura County, California, beginning at the northwest corner of Rancho El Rio De Santa Clara O La Colonia and proceeding east along the Santa Clara River to the City of Fillmore and including the Fillmore city limits, and then from the City of Fillmore south on Highway 23 to the City of Thousand Oaks and including the Thousand Oaks city limits, and then from the City of Thousand Oaks south on Highway 23 to the Ventura County/Los Angeles County line,and then southwest along the Ventura County/Los Angeles County line to a point directly east of Post Mugu, and then directly west to Point Mugu, and then from Point Mugu west along the coastline to the point of beginning.

If the proposed port of entry designation is adopted, the lists of Customs regions, districts, ports of entry, and station in 19 CFR 101.3(b) and 101.4(c) will be amended accordingly.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, N.W., Washington, D.C.

AUTHORITY

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

REGULATORY FLEXIBILITY ACT

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

EXECUTIVE ORDER 12291

Because this document relates to agency organization and management, it is not subject to Executive Order 12291.

DRAFTING INFORMATION

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

MICHAEL H. LANE,
Acting Commissioner of Customs.

Approved: October 29, 1991.
PETER K. NUNEZ,
Assistant Secretary of the Treasury.

[Published in the Federal Register, November 1, 1991 (56 FR 56179)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Judges

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Jane A. Restani
Dominick L. DiCarlo
Thomas J. Aquilino, Jr.
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Richard W. Goldberg

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Samuel M. Rosenstein

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Clerk

Joseph E. Lombardi

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* Acting as Chief Judge, effective May 1, 1991, pursuant to 28 U.S.C. § 253d.

Decisions of the United States Court of International Trade

(Slip Op. 91–94)

TORRINGTON CO., PLAINTIFF *v.* UNITED STATES, DEFENDANT, AND NTN BEARING CORP. OF AMERICA, ET AL., DEFENDANT-INTERVENORS

Court No. 91–05–00355

[Motion for reconsideration granted. Upon reconsideration, the Court adheres to its prior decision granting plaintiff's motion to amend its summons and complaint.]

(Decided October 6, 1991)

Stewart and Stewart (*Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr., Wesley K. Caine, Lane S. Hurewitz* and *Serena L. Wilson*), for plaintiff.

James A. Toupin, Assistant General Counsel, *Marc A. Bernstein*, Office of General Counsel, United States International Trade Commission, for defendant.

Howrey & Simon (*Herbert C. Shelley* and *Juliana M. Cofrancesco*) for SKF USA, Inc., SKF Argentina S.A., SKF Steyr Ges.m.b.H., SKF do Brazil Ltda. and SKF Industrias Mexicanas, S.A. de C.V., defendant-intervenors.

MEMORANDUM OPINION AND ORDER

DICARLO, *Judge*: Plaintiff brings this action challenging the preliminary negative determinations of injury by the U.S. International Trade Commission in the antidumping and countervailing duty investigations of *Ball Bearings, Mounted and Unmounted, and Parts Thereof, from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey, and Yugoslavia*, 56 Fed. Reg. 14, 534 (Int'l Trade Comm'n 1991) (neg. prelim.). The Court has jurisdiction under 19 U.S.C. § 1516a(a)(1)(C) (1988) and 28 U.S.C. § 1581(c) (1988).

Defendant-intervenors SKF USA, Inc., SKF Argentina S.A., SKF Steyr Ges.m.b.H., SKF do Brazil Ltda. and SKF Industrias Mexicanas, S.A. de C.V. ("SKF"), move the Court to reconsider its order granting plaintiff's motion to amend its timely filed summons and complaint. Plaintiff's motion, filed outside the statutory time limit for bringing an action, amended two paragraphs in the summons and one paragraph in the complaint by including "Spain" in the title of the above ITC determinations. Plaintiff's motion to amend was unopposed.

SKF claims it never had the opportunity to contest plaintiff's motion because it was granted by the Court before SKF was permitted to intervene. SKF argues plaintiff's original summons and complaint did not identify the Spanish antidumping investigation as the subject of the ap-

peal and, therefore, plaintiff effectively attempted to commence a new action. SKF continues that since plaintiff filed its motion to amend beyond the limitation period, the Court lacks jurisdiction over an action challenging the Spanish investigation.

Since questions of the Court's subject matter jurisdiction can be raised at any time, USCIT R. 12(h)(3); *Syva Co. v. United States*, 12 CIT 199, 200, 681 F. Supp. 885, 887 (1988) (citations omitted), the Court grants SKF's motion to reconsider.

DISCUSSION

Generally, amendments to a timely filed summons or complaint relate back to the date of the original filing. *See, e.g. Intrepid v. Pollock*, 907 F.2d 1125, 1130 (Fed. Cir. 1990) (complaint); *NEC v. United States*, 12 CIT 399, 400, 685 F. Supp. 258, 259 (1988) (summons). The court may in its discretion allow a summons to be amended at any time and upon such terms as it deems just, unless it clearly appears that material prejudice would result. USCIT R. 3(d). In determining whether an amendment to a summons relates back, "the fundamental concern of the court should be whether it is possible to discern from the totality of the documents involved in the filing, the true object of plaintiff['s] action." *NEC v. United States*, 12 CIT 399 at 400, 685 F. Supp. at 259. Also, a party may amend its pleading once as a matter of course before a responsive pleading is served. USCIT R. 15(a). In determining whether an amendment to a pleading relates back, the Court's inquiry will focus on the notice given in the original pleading. *Intrepid v. Pollock*, 907 F.2d at 1130.

Even though plaintiff omitted "Spain" from the list of fourteen countries when citing the ITC determinations in its summons and complaint, the errors were clerical in nature and could be reasonably ascertained from a review of the documents involved in the filing. First, plaintiff referred to challenged determinations as "Inv. No. 701–TA–307 and *731–TA–498–511*." Summons at paragraph 1; Complaint at paragraph 1. (emphasis added). Since the Spanish investigation was 731–TA–508, it was apparent that plaintiff's reference to investigation numbers "731–TA–498–511" included the Spanish investigation.

Second, in paragraph two of the complaint, plaintiff alleged it had standing to contest the Spanish investigation by referring to it by name and investigation number. Third, in paragraphs seven and nine, plaintiff alleged the negative determination in the Spanish investigation was arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law. Fourth, in several other paragraphs of the complaint and in its prayer for relief, plaintiff referred to "fourteen countries." Thus, it was discernable from the documents involved in the filing that the true object of plaintiff's action included a challenge to the Spanish antidumping investigation.

Since plaintiff filed its motion to amend before any responsive pleading was served and before SKF or any other defendant-intervenor filed its motion to intervene, plaintiff's clerical error was corrected at an

early stage in the litigation and no material prejudice would have resulted to the substantial rights of any of the parties involved in this action.

Plaintiff relies on cases in which either a summons or complaint had not been timely filed, *see, e.g. Georgetown Steel Corp. v. United States*, 4 Fed. Cir. (T) 143, 801 F.2d 1308 (1986); *NEC Corp. v. United States*, 5 Fed. Cir. (T) 49, 806 F.2d 247 (1986), or where amendments to a summons would have raised issues not apparent in the original filing. *See Brimstone Export Ltd. v. United States*, 7 CIT 209 (1984). In this action, plaintiff's timely summons and complaint identified, albeit imperfectly, the Spanish investigation as the subject of the appeal.

CONCLUSION

Under these facts and circumstances, the amendments to plaintiff's summons and complaint relate back to the date of the original filing and the Court has jurisdiction over an action challenging the Spanish investigation. Upon reconsideration, the Court adheres to its prior ruling granting plaintiff's motion to amend its summons and complaint.

Index

Customs Bulletin and Decisions
Vol. 25, No. 46, November 13, 1991

U.S. Customs Service

Treasury Decisions

Proposed Rulemakings

U.S. Court of International Trade

Slip Opinions

U.S. G.P.O. 1991–282–776:20057